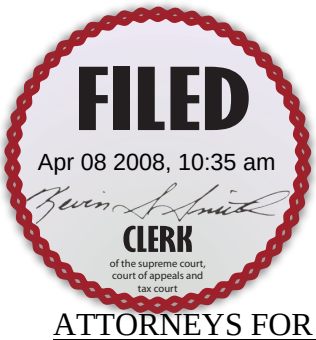

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IN THE
COURT OF APPEALS OF INDIANA

JEREMY A. BRITTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 40A01-0706-CR-254
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0606-FB-142

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jeremy A. Britton appeals his conviction and sentence for Robbery Resulting in Bodily Injury, a class B felony.[1] He presents the following restated issues for review:

1. Does the record establish that the trial court properly exercised jurisdiction over Britton, a juvenile?

2. Did the State present sufficient evidence to support the robbery conviction?

3. Was Britton's sentence inappropriate in light of the nature of the offense and his character?

We affirm.

The facts favorable to the verdict reveal that on the evening of April 27, 2006, fifteen-year-old Britton went to a dam in Jennings County to drink alcohol with several other young persons, including Roger Feltner and Anthony Walker. While they were drinking on the bank of the river, Walter Smith arrived with a bag of gear and began to fish on a sandbar. Smith was fifty-seven years old with diminished mental capacity, resulting in him being on Social Security disability. Smith carried large amounts of cash with him at all times because he refused to put his money in the bank.

At some point, the group approached Smith to make sure he would not report them to the police. Some members of the group began going through Smith's bag, which made Smith nervous. Feltner stopped them and everyone except Feltner walked away from Smith and up to the dam. Feltner apologized to Smith for the group's behavior and spoke with Smith for several more minutes. Smith checked his bag, telling Feltner that he needed to make sure they did not get his money. Smith then pulled out a large wad of

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[1] Ind. Code Ann. § 35-42-5-1 (West 2004).

cash and placed it in his shirt pocket. Smith continued to speak with Feltner and asked him not to tell the others about the money.

When Feltner walked back to his group, he informed Walker and the others that Smith had at least three to four thousand dollars of cash in his shirt pocket. Walker immediately directed Britton to go down and get the money from Smith. Upon being approached by Britton, Smith asked what he wanted. Britton responded, "I want your money". *Transcript* at 207. Smith denied having any money, but Britton said he knew better and then bumped or pushed Smith a bit. When Smith put his hand over his shirt pocket and tried to walk away, Britton grabbed Smith's shirt and claimed he had a gun. Britton then waived to Walker to come down.

Britton took a step back as Walker quickly approached. Walker proceeded to punch Smith in the mouth. The blow caused Smith to fall to the ground, lose a tooth, and split his lip – an injury that would later require several stitches. While Smith was on the ground, Walker struck and/or kicked Smith in the back of the head and then seized the money from Smith's shirt pocket. After taking over $10,000 from Smith, Walker and Britton ran back up to the dam and fled with their friends to a location where they could all divvy up the money. For his part, Britton collected over $4000.

On May 5, 2006, the State filed a petition alleging that Britton was a delinquent child for committing acts that if committed by an adult would constitute class B felony robbery, class B felony aiding a robbery, class D felony theft, and class A misdemeanor battery. That same day, the State also filed a motion requesting that the juvenile court waive jurisdiction and transfer the case to the criminal docket of the Jennings Circuit

Court. On June 16, 2006, following a hearing, the juvenile court issued an order waiving jurisdiction so that Britton could stand trial as an adult.[2]

Thereafter, the State filed criminal charges against Britton. The charges included robbery resulting in bodily injury, a class B felony, aiding robbery resulting in bodily injury, a class B felony, theft, a class D felony, and battery resulting in bodily injury, a class A misdemeanor. On April 11, 2007, the jury found Britton guilty as charged, except to the extent it found him guilty of a lesser-included battery charge. At the sentencing hearing, the trial court entered a conviction for robbery resulting in bodily injury, merging the other counts into this one. The trial court then sentenced Britton to a ten-year period of incarceration with four of those years suspended to probation. Britton now appeals his conviction and sentence.

1.

Britton initially asserts there is no evidence in the record to establish that he was properly waived into adult court. He claims there is no petition for or order of waiver contained in the record of this case. Thus, "Britton urges this Court to reverse his conviction on the basis that there is not adequate documentation in the record that the trial court had proper jurisdiction over Britton." *Appellant's Brief* at 6.

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[2] The Waiver Order indicates that Britton, his father, and counsel all agreed waiver was appropriate. The order further provides, in part:

> 5.) The acts alleged are aggravated because they are part of a repetitive pattern of delinquent acts and involve personal injury.
> 6.) The child is beyond rehabilitation under the juvenile justice system.
> 7.) It is in the best interest of the safety and welfare of the community that the child stand trial as an adult.

Appellee's Appendix at 8-9.

The State, however, has provided us with relevant documents contained in the record of the juvenile court proceedings. These documents include, among other things, the Delinquency Petition, Motion to Waive Child, and Waiver Order. The documents provided by the State establish that a hearing was held and that the proper procedures were followed in obtaining waiver into adult court. Thus, there is no merit to Britton's belated challenge to the trial court's jurisdiction.[3]

2.

Britton next challenges the sufficiency of the evidence supporting his robbery conviction. In this regard, Britton notes that the jury found him guilty of B-misdemeanor battery rather than A-misdemeanor battery involving bodily injury. Thus, he claims the jury necessarily concluded he was not involved in causing bodily injury to Smith "through his own acts". *Appellant's Brief* at 7. Moreover, Britton asserts there is "little evidence that he assisted Anthony Walker." *Id*. at 8.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review "respects 'the jury's exclusive province to weigh conflicting evidence.'" *Id*. at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences

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[3] We do not have a transcript of the waiver hearing before us. Even if we were to make the unwarranted assumption that said transcript was unavailable to the parties, however, we remind counsel of the obligation to prepare a verified statement of the evidence from the best available sources, including the recollections of those present at the waiver hearing. *See Gregory v. State*, 270 Ind. 435, 386 N.E.2d 675 (Ind. 1979); *see also Graddick v. Graddick*, 779 N.E.2d 1209 (Ind. Ct. App. 2002) (citing Ind. Appellate Rule 31).

supporting the verdict, we must affirm "'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To convict Britton of robbery causing bodily injury, the State was required to prove: Britton knowingly or intentionally took property from the person or presence of Smith while using or threatening the use of force, resulting in bodily injury to Smith. *See* I.C. § 35-42-5-1.

Britton's claim in this regard seems to be that he was not the one who punched Smith, causing bodily injury, or who physically took the money out of his pocket. While this appears to be a fair description of the evidence, we observe it is well established in Indiana that "the responsibility of a principal and an accomplice is the same." *Taylor v. State*, 840 N.E.2d 324, 338 (Ind. 2006) ("one may be charged as a principal yet convicted on proof that he or she aided another in the commission of a crime"); *see also Whitener v. State*, 696 N.E.2d 40, 44 (Ind. 1998) ("a defendant may be convicted on evidence of aiding or inducing even though the State charged the defendant as the principal"). Ind. Code Ann. § 35-41-2-4 (West 2004) provides that a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense.

Here, at Walker's request, Britton confronted Smith with the intent to rob him of thousands of dollars. Britton demanded money from Smith, told Smith he was armed, and physically struggled with him. When this did not cause Smith to hand over the

money, Britton motioned to Walker for help. Walker immediately responded by approaching Smith and punching him in the mouth. As Britton stood within arms length and watched, Walker struck the fallen man again and took the cash out of his pocket. Britton then fled the scene with Walker and ultimately received over $4000 for his part in the crime.

The fact Britton did not deliver the knockdown punch is of no import, as his active involvement in the robbery is clear—he started the robbery and Walker helped finish it. *See Sheckles v. State*, 684 N.E.2d 201, 204 (Ind. Ct. App. 1997) ("the responsibility for any bodily injury which occurs during the commission…of a robbery rests on the perpetrators of the crime, regardless of who inflicts the injury, so long as it is a natural and probable consequence of the events and circumstances surrounding the robbery"). We, therefore, find ample evidence in the record to support Britton's robbery conviction based upon accomplice liability.

3.

Finally, Britton challenges his sentence as inappropriate. In his brief argument that his ten-year sentence should be revised, Britton simply states without any citations to the record:

> Britton's priors were juvenile offenses and, except for the BB gun episode, nonviolent in nature. Britton was age 15 at the time of this offense and the youngest co-defendant, yet he received the stiffest sentence and was remanded to adult prison—this is in spite of the fact that certain more culpable co-defendants received much more lenient treatment.

Appellant's Brief at 8.

Although a trial court may have acted within its lawful discretion in determining a sentence, we are constitutionally authorized to independently review and revise sentences on appeal. *Hollin v. State*, 877 N.E.2d 462 (Ind. 2007). This authority is implemented through Ind. Appellate Rule 7(B), which allows us to revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. An appellant has the burden of persuading us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We initially observe that Britton received the advisory sentence of ten years for this offense, and the trial court suspended four of those years to probation. *See* Ind. Code Ann. § 35-50-2-5 (West, PREMISE through 2007 1st Regular Sess.). With respect to the nature of the offense, the facts reveal that Walker and Britton robbed a mentally disabled man of over $10,000 and in the process knocked out the man's tooth and caused a large gash in his lip. Even if Britton may have been slightly less culpable than Walker in the commission of the instant offense, we do not believe this makes the advisory sentence imposed upon Britton inappropriate.[4]

Turning to Britton's character, we observe that at the tender age of fifteen Britton had amassed a lengthy juvenile record. Since the age of twelve, he had acquired six formal delinquency adjudications and numerous probation violations. Britton has spent a

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[4] Though not a pertinent sentencing consideration, we note the record does not support Britton's claim that he received the stiffest sentence among the codefendants or his implication that Walker received more lenient treatment. In fact, at the sentencing hearing, Britton's attorney indicated that he believed Walker was "going to accept a plea agreement in this case for a ten-year sentence with four years suspended." *Transcript* at 524-25. This is precisely the sentence imposed upon Britton.

significant period of time on probation, in juvenile detention, and on house arrest. His most recent prior adjudication involved criminal recklessness resulting in serious bodily injury, which resulted in his incarceration at the Indiana Boys School for ten months. In fact, Britton was released from the Boys School only one month prior to the instant offense. Despite significant contacts with the juvenile justice system, Britton's aberrant behavior has continued and has escalated. Thus, after due consideration of the nature of Britton's crime and his character, we cannot say that his sentence is inappropriate.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.